

Name: Maria Sanchez-Gagne

**JUDICIAL SELECTION COMMISSION**

**Application for Judicial Vacancy on the First Judicial District Court**

**APPLICATION**

**PERSONAL**

1. Full Name	Maria Sanchez-Gagne			
2. County of Residence	Santa Fe, New Mexico			
3. Birthplace	Santa Fe, New Mexico			
4. If born outside the US, give the basis for your citizenship				
5. Birth Date	[REDACTED] 1961			
6. Marital Status	Married			
7. If married, list spouse's full name	John R. Gagne			
8. Spouse's occupation	Self-employed			
9. Do you have any other familial relationships that might present conflicts if you were to be seated as a judge? If so, please explain these relationships and how you would address any conflicts.				
Answer 9: No				
10. List all places of residence, city and state, and approximate dates for the last 10 years				
Date(s) of Residence	Street Address	City	State	Zip
2002	513 E. Coronado Road	Santa Fe	NM	87505

**EDUCATION**

11. List schools attended with dates and degrees (including all post-graduate work)	
High School(s)	Santa Fe High School, 1976-1979 -High school diploma
College(s)	New Mexico State University, 1979-1981 University of Missouri, 1981-1982 University of New Mexico, 1982-1984, Bachelor of Arts Degree
Law School(s)	University of Denver, 1993-1996, Juris Doctorate, Law

12. Bar Admissions and Dates	New Mexico State Bar - 1997
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**EMPLOYMENT**

13. List Your Present Employment	
Date(s) of Employment	11/2015 to Present
Employer	New Mexico Office of the State Engineer
Mailing Address	P.O. Box 25102
Business Phone	505-476-7406
Position	Alternative Dispute Resolution Officer/Hearing Examiner-Hearing Unit

Duties	Facilitate negotiated settlements and preside over hearings regarding water rights disputes. Enter decisions and draft orders.
Supervisor	Uday V. Joshi
<b>14. List Your Previous Employment (beginning with most recent)</b>	
Dates of Employment	2000-2015
Employer	New Mexico Attorney General
Mailing Address	P.O. Drawer 1508, Santa Fe, New Mexico 87504-1508
Business Phone	505-490-4060
Business FAX	
Employer's Email Address	hbalderas@nmag.gov
Position	Assistant Attorney General
<b>14. List Your Previous Employment (beginning with most recent)</b>	
Dates of Employment	1996-2000
Employer	District Attorney, First Judicial District
Mailing Address	P.O. Drawer 2041, Santa Fe, New Mexico 87504
Business Phone	505-827-5000
Business FAX	
Employer's Email Address	mserna@da.state.nm.us
Position	Assistant District Attorney

**Note:** No. 14 is a separate table which enables you to copy and paste it as many times as necessary to list all previous employers.

#### **PARTNERS AND ASSOCIATES**

<b>15. List all partners and associates, beginning with the current or most recent:</b>
Answer 15: n/a

#### **EXPERIENCE**

<b>16. How extensive is your experience in Personal Injury Law?</b>
Answer 16: No experience
<b>17. How extensive is your experience in Commercial Law?</b>
Answer 17: Fair amount of experience in dealing with commercial law related to NM water law. As a Hearing Examiner and Alternative Dispute Resolution Officer, I preside over many matters involving water leases or the sale of water rights. I also have experience in commercial law related to money laundering prosecutions where commercial businesses are involved in money laundering activity.
<b>18. How extensive is your experience in Domestic Relations Law?</b>
Answer 18: Fair amount of experience related to criminal cases I have prosecuted involving domestic violence, sexual assault and human trafficking.
<b>19. How extensive is your experience in Juvenile Law?</b>
Answer 19: Very extensive. As an Assistant District Attorney, I was a children's court attorney for two years and prosecuted all types of juvenile-related crimes.
<b>20. How extensive is your experience in Criminal Law?</b>
Answer 20: Very extensive. I have practiced in criminal law for 20 years and I have prosecuted hundreds of cases ranging from misdemeanors to felonies as well as experience in prosecutions with Mexico through Article 4 of the Mexican Federal Penal Code and the International Extradition Treaty with

Mexico.
<b>21. How extensive is your experience in Appellate Law?</b>
Answer 21: Some experience, primarily in administrative appeals.
<b>22. How many cases have you tried to a jury? Of those trials, how many occurred within the last two years? Please indicate whether these jury trials involved criminal or civil cases.</b>
Answer 22: Approximately 20 cases. None. Criminal cases
<b>23. How many cases have you tried without a jury? How many of these trials occurred within the last two years? Please indicate whether these non-jury trials involved criminal or civil cases.</b>
Answer 23: Approximately 40-50 cases. None. Criminal cases.
<b>24. How many appeals have you handled? Please indicate how many of these appeals occurred within the last two years.</b>
Answer 24: Several administrative appeals. Three

**PUBLIC OFFICES/PROFESSIONAL & CIVIC ORGANIZATIONS**

<b>25. Public Offices Held and Dates</b>	
Public Office	Dates

<b>26. Activities in professional organizations, including offices, held, for last 10 years</b>		
Professional Organization	Position Held	Dates
Volunteer Attorney Program Justice For Families Pro Bono Innovation Project New Mexico Legal Aid, Inc.	Volunteer Attorney	2017 – present
NM Hispanic Bar Association	Member	2000-20015
First Judicial District Bar Association	Member	2012-2015
<b>27. Activities in civic organizations, including offices, held, for last 10 years</b>		
Civic Organization	Position Held	Dates
Cristo Rey Catholic Church	<ul style="list-style-type: none"> <li>Member of Parish Finance Council</li> <li>Extraordinary Minister of Holy Communion</li> <li>Director of Confirmation Program &amp; Instructor</li> <li>Recipient of St. Francis of Assisi Award for service</li> </ul>	2016 – present  2015 - present  1999 - 2013  2008

Santa Fe County Federation of Democratic Women	Member	2016 – present
Emerge New Mexico	Member	2016 – present
NM Catholic Charities Board of Directors	Vice Chairperson	2000-2005

**28. Avocational interests and hobbies**

Answer 28: beekeeping, golf, yoga, hiking, gardening and kettlebell

**29. Have you been addicted to the use of any substance that would affect your ability to perform the essential duties of a judge? If so, please state the substance and what treatment received, if any.**

Answer 29: No

**30. Do you have any mental or physical impairment that would affect your ability to perform the essential duties of a judge? If so, please specify**

Answer 30: No

**31. To your knowledge, have you ever been disciplined for violation of any rules of professional conduct in any jurisdiction? In particular, have you ever received any discipline, formal or informal, including an "Informal Admonition." If so, when, and please explain.**

Answer 31: No

**32. Have you ever been convicted of any misdemeanor or felony other than a minor traffic offense?**

Answer 32: No

**33. Have you ever had a DWI or any criminal charge, other than a minor traffic offense, filed against you? If so, when? What was the outcome?**

Answer 33: No

**34. Have you ever been a named party in any lawsuit in either your personal or professional capacity? If so, please explain the nature of the lawsuit(s) and the result(s).**

Answer 34: Yes, Maria Sanchez-Gagne v. New Mexico Attorney General's Office (2015) I am one of a class of 20 plaintiffs claiming wrongful termination. Currently pending with the NM Court of Appeals.

**35. To your knowledge, is there any circumstance in your professional or personal life that creates a substantial question as to your qualifications to serve in the judicial position involved or which might interfere with your ability to so serve?**

Answer 35: No

**36. If you have served as a judge in New Mexico, have you ever been the subject of charges of a violation of the Code of Judicial Conduct for which a public filing has occurred in the New Mexico Supreme Court, and if so, how was it resolved?**

Answer 36: No

**37. If you have served as a judge in New Mexico, have you ever participated in a Judicial Performance Evaluation, including interim, and if so, what were the results?**

Answer 37: No

**38. Have you filed all federal, state and city tax returns that are now due or overdue, and are all tax payments up to date? If no, please explain.**

Answer 38: Yes

**39. Have you or any entity in which you have or had an interest ever filed a petition in bankruptcy, or has a petition in bankruptcy been filed against you? If so, please explain.**

Answer 39: No

**40. Are you presently an officer, director, partner, majority shareholder or holder of a substantial interest in any corporation, partnership or other business entity? If so, please list the entity and your relationship:**

Answer 40: Partner in San Juan Apiaries Honey, Vice President, Steel Structures Unlimited

**41. Do you foresee any conflicts under the NM Code of Judicial Conduct that might arise regularly? If so, please explain how you would address these conflicts.**

Answer 41: No

**42. Do you meet the constitutional qualifications for age, residency, and years of practice for the judicial office for which you are applying? Please explain.**

Answer 42: Yes, I am over 35 years old, I have been practicing law in New Mexico for twenty years and I reside in Santa Fe county, located within the First Judicial District.

**43. Please explain your reasons for applying for a judicial position and what factors you believe indicate that you are well suited for it.**

Answer 43:

As a Santa Fe native, I have spent my entire legal career in public service serving the citizens of New Mexico. Prior to attending law school, I worked at the First Judicial District Court and was fortunate to work for a judge who mentored me and inspired me with her compassion, fairness and commitment in assuring that justice was available to all persons in her courtroom regardless of education, ethnicity, or economic status.

As a prosecutor for over twenty years, I sought justice for victims of child abuse, domestic violence, sexual assault and victims of human trafficking. Successful prosecution of these difficult cases required close collaboration with social service providers and often defense counsel to determine what was best for the victim beyond a straightforward prosecution.

I am presently working as a Hearing Examiner at the Office of the State Engineer, presiding in hearings involving water rights in New Mexico. As an Alternative Dispute Resolution (ADR) Officer I serve as a facilitator to help parties negotiate a settlement. Many of the parties in these complex matters are municipalities, businesses and individuals who represent themselves. In this quasi-judicial role, I am keenly aware of the need to explain processes clearly to self-represented parties so that they may represent themselves effectively. My experience as a Hearing Examiner has enhanced my sense of justice to ensure that all parties are treated fairly and held accountable, including businesses and pro-se parties.

I have dedicated my legal career serving my community. I have extensive experience practicing in many complex areas of law including criminal and civil matters. Throughout my legal career I have demonstrated a commitment to seeking justice. My extensive experience and commitment to the accessibility of justice for all persons, make me uniquely qualified to serve as a district court judge in the First Judicial District.

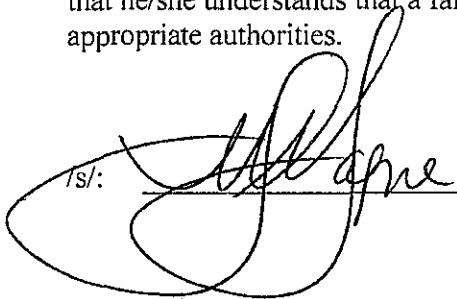
**44. Does submission of this application express your willingness to accept judicial appointment to the First Judicial District Court if your name is chosen by the Governor?**

Answer 44: Yes

[Instructions: All of the answers stated in this application must be affirmed as true under penalty of perjury, by self-affirmation.]

#### AFFIRMATION

The undersigned hereby affirms that he/she is the person whose signature appears herein on this application for judicial appointment; that he/she has read the same and is aware of the content thereof; that the information that the undersigned has provided herein is full and correct according to the best knowledge and belief of the undersigned; that he/she has conducted due diligence to investigate fully each fact stated above; that he/she executed the same freely and voluntarily; that he/she affirms the truth of all statements contained in this application under penalty of perjury; and that he/she understands that a false answer may warrant a referral to the Disciplinary Board or other appropriate authorities.

/s/  \_\_\_\_\_ Date: 8/28/14

## REFERENCES

Tom Blaine P.E.  
New Mexico State Engineer  
Secretary, Interstate Stream Commission  
New Mexico Office of the State Engineer  
505-231-9202

Dan Cron  
Dan Cron Law Firm P.C.  
Santa Fe, NM  
505-690-0504

James C. Brockman  
Stein & Brockman PA  
Santa Fe, NM  
505-983-3880

Representative Carl Trujillo  
NM House of Representatives  
505-699-6690

Marcela Diaz  
Executive Director  
Somos Un Pueblo Unido  
Santa Fe, NM  
505-670-9301

Gary King  
Former New Mexico Attorney General  
505-238-9464

W. Peyton George  
Attorney  
Santa Fe, NM  
505-690-4001

Hon. Patricio Serna  
Retired NM Supreme Court Justice  
505-660-5231

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF XXXXXXXXX  
STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff,

vs.

No. XXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX,

Defendant.

**OBJECTION TO DEFENDANT'S PROPOSED JURY INSTRUCTION**

COMES NOW, the State, through Assistant Attorney General Maria Sanchez-Gagne, and hereby submits this brief in objection to Defendant's proposed instruction related to the human trafficking charge and as grounds therefore states:

**THE LEGISLATURE DID NOT INTEND TO CREATE A MISTAKE OF AGE**

**DEFENSE**

The defendant's tendered jury instruction adds a new element that is not part of the human trafficking statute, NMSA 30-52-1. The statute explicitly provides that the plain language of Section 30-52-1 requires the mental state for "knowingly recruited, enticed, transported or obtained by any means another person...", and the 'intent' or 'knowledge' that the victim would be caused to engage in commercial sexual activity. Knowledge of the victim's age is not an essential element of the offense. 'Like the statutory rape statutes, statutes regarding battery and assault upon a peace officer by their plain language do not require proof of an additional element of knowledge'. State v. Nozie, 146 N.M., 142, 207 P.3d 1119.



The principal goal of statutory construction “is to ascertain and give effect to the intent of the Legislature.” Nick R., 2009-NMSC-050, ¶11. The plain language of a statute is the primary indicator of legislative intent. State v. Juan, 2010-NMSC-041, ¶37, 148 N.M. 747, 242 P.3d 314. Courts also examine the history and background of a statute, its object or purpose, its context, and other statutes in pari materia to discern the Legislature’s intent and to assure that a statute’s plain language conveys the meaning the Legislature foresaw. State ex rel. Helman v. Gallegos, 117 N.M. 346, 353, 871 P.2d 1352, 1359 (1994). New Mexico has explored the best means of ascertaining the Legislature’s intent with respect to the mental state required for a criminal offense. State v. Nozie, 2009-NMSC-018, ¶¶ 25-30, 146 N.M. 142, 207 P.3d 1119. Addressing whether aggravated battery on a peace officer requires the offender to know the victim’s identity as a peace officer, the New Mexico Supreme Court adopted Justice Ransom’s statutory construction analysis from his specially concurring opinion in Reese v. State, 106 N.M. 498, 745 P.2d 1146 (1987).

Justice Ransom explained that criminal statutes should be construed “in light of the common law rule that existence of criminal intent is essential.” Reese, 106 N.M. at 501 745 P.2d at 1149 (Ransom, J., specially concurring). This common law rule makes it appropriate to presume the Legislature intended to require some criminal mental state in addition to the criminal act unless the Legislature clearly provides for strict liability. Id.; accord Nozie, 2009-NMSC-018, ¶26. However, Justice Ransom also observed that there were “notable exceptions” to the common law rule and specifically mentioned statutory rape. Reese, 106 N.M. at 502, 745 P.2d at 1150 (Ransom, J., specially concurring). He further noted that “New Mexico has limited its interpretation of strict liability felonies to child victim crimes.” Id. The common law rule thus does not warrant a presumption against strict liability for child victim crimes.

Regardless of presumptions, Justice Ransom, and by adoption in Nozie, set out seven factors to help ascertain the Legislature's intent. Reese, 106 N.M. at 502-03, 745 P.2d at 1150-51 (Ransom, J., specially concurring); Nozie, 2009-NMSC -018, ¶ 25. These factors applied to Section 30-52-1(A)(2) show that the Legislature did not intend to establish a mistake of age defense.

The first factor is legislative history and context. With respect to other similar crimes involving child victims, such as criminal sexual penetration of a minor, the Legislature had previously recognized a mistake of age defense in express terms and the Legislature is presumed to be aware of pre-existing law. Albuquerque Commons P'ship v. City Council, 2011-NMSC-002, ¶15, 149 N.M. 308, 248 P.3d 856. Yet the Legislature did not include such a provision in Section 30-9-11. See State v. Katrina G., 2007-NMCA-048, ¶ 17, 141 N.M. 501, 157 P.3d 66 (relying on the negative inference that, when the Legislature has demonstrated that it "knows how" to include particular language, the absence of such language indicates a deliberate choice to omit it); United States v. Malloy, 568 F.3d 166, 172 (4<sup>th</sup> Cir. 2009) ("When Congress intends a statute to include an affirmative defense, particularly in the context of the laws involving child pornography and sexual exploitation of children, it can and has included the defense in the statute's text."); see also United States v. Baker, 508 F.3d 1321, 1327 (10<sup>th</sup> Cir. 2007) (relying on the principle that Congress knows how to create an affirmative defense when it so intends).

Unlike 30-9-11, Section 30-52-1(2) contains no age differential, further supporting this as a deliberate omission. The Legislature did not include a requirement that the perpetrator know the victim's age, emphasizing the interpretation of this crime involving children as a strict liability offense.

The Legislature knew how to create a mistake of age defense or other mens rea requirement for human trafficking, and their omission from the statute signals a clear legislative intent to disallow such a defense.

The second factor from Nozie is inapplicable because the Legislature has not explained how the judiciary should determine whether strict liability applies. The third factor is the severity of the crime. Nozie, 2009-NMSC-018, ¶25. A third degree penalty applies to human traffickers who have trafficked adults, eighteen year-old, and seventeen year-old victims. If the victim is under sixteen years old, the person is guilty of a second degree felony and if the victim is under thirteen years-old, a first degree felony. In this case the victim was seventeen at the time of the incident. The penalty for a person convicted of trafficking a seventeen year-old is far less severe than the first degree felony of human trafficking of a child under thirteen.

The fourth factor, seriousness of the harm to the public, is of paramount importance. The statute's clear purpose is the protection of minors. If the prosecution were required to prove knowledge with regard to the victim's age, it would be the rare defendant who would not claim to have mistaken the victim for an adult. Imposing such a mens rea requirement would be tantamount to permitting adults to prey upon minors so long as they cultivate ignorance of their victim's age. But "the statute is intended to protect young persons who are transported for illicit purposes, and transporters who remain ignorant of the age of those whom they transport. United States v. Taylor, 239 F.3d 994, 997 (9<sup>th</sup> Cir. 2001). It would be nonsensical to require proof of knowledge of the victim's age when the statute exists to provide special protection for all minors, including, if not especially, those who could too easily be mistaken for adults. Such minors are still minors, "regardless of what [they] say [ ] or how [they] appear." Id. at 997.

The United States Supreme Court has discussed the fifth factor-the defendant's opportunity to ascertain the true facts-in the specific context of statutory rape. Contrasting the possession of child pornography with its production, as well as with statutory rape, the Court observed that an opportunity for a reasonable mistake of age "increases significantly once the victim is reduced to a visual depiction," whereas for statutory rape "the perpetrator confronts the underage victim personally and may reasonably be required to ascertain that victim's age." United States v. X-Citement Video, 513 U.S. 64, 72 n.2 (1994).

The sixth factor from Nozie concerns the difficulty of proof. A defendant's state of mind may be shown through circumstantial evidence. See Nozie, 2009-NMSC-018, ¶32. However, there are at least two difficulties the State faces in disproving a mistake of age. First, the defendant is likely to rely on the conduct or appearance of the victim in establishing a mistake of age, effectively putting the victim on trial for the common and blameless juvenile behavior of attempting to act older than the actual child's age. The Legislature specifically sought to protect minors from poor decision-making; it would make little sense for the legislature to have retained criminal liability for a minor's ill-advised choice to be sold for sex, but to remove the protections of the statute when the minor chooses to lie about his or her age or attempts to dress or act older than the minor's actual age.

The seventh factor listed in Nozie is the number of anticipated prosecutions. The human trafficking statute is fairly new to New Mexico and in over 20 prosecutions, there has never been the mistake of age defense. This factor is thus neutral.

There is another factor discussed in Nozie, but that is not numbered: the nexus between strict liability and the public interest. The New Mexico Supreme Court observed that strict liability would not serve the deterrent purpose of preventing crimes against peace officers;

knowledge of identity is necessary for the added deterrent effect of increased penalties for crimes against peace officers. Nozie, 2009-NMSC-018, ¶ 30. The same is not true of human trafficking. The absence of a mistake of age defense provides greater deterrence against adults selling children for commercial sexual purposes. Even if an adult has some difficulty judging the difference between a sixteen and seventeen year-olds, the adult should be able to recognize that the individual is significantly younger and likely a child under the age of majority. Given the increased influence of adults over minors, and the societal harm of selling children for commercial sexual purposes, the circumstances dictate that the adult, rather than the child, should bear the risk of error. Such an affirmative duty placed on adults would result in greater caution about a minor's age and deter willful blindness or recklessness about age in seeking out children as sexual partners. See Owens, 724 A.2d 43, 52-54 (Md. 1999).

An assessment of the Nozie factors as a whole shows that the Legislature did not intend to create an affirmative defense of mistake of age to 30-52-1(a)(2). For all the foregoing reasons the State of New Mexico respectfully requests that this Court deny Defendant's proposed jury instruction related to the count of human trafficking.

Respectfully Submitted,

GARY K. KING  
Attorney General

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### **PUBLICATION**

Attached is a copy of the cover and index of a Human Trafficking Law Enforcement Training Manual. I wrote the entire contents of the material contained in this publication to train law enforcement in New Mexico on human trafficking investigations. The training manual exceeds the 20 page limit, therefore, I did not attach the entire publication with the application.

# HUMAN TRAFFICKING



Office of New Mexico  
Attorney General  
Gary K. King

Law Enforcement  
Training Manual

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Victims' stories in this manual are meant to be representative and do not cover all forms of human trafficking. While the stories are true, names and locations have been changed to protect the victims' identities. Photographs in this manual do not depict real victims. They are for illustration purposes only.